IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1934.

No. 13, Original

THE UNITED STATES OF AMERICA, *Plaintiff*,

vs.

THE STATE OF OREGON, *Defendant*.

MOTION FOR LEAVE TO FILE SUPPLEMENTAL ANSWER

Comes now The State of Oregon, defendant above named, by its Attorney General and moves the Court for an Order permitting it to file its Supplemental Answer herewith submitted.

ISAAC H. VAN WINKLE,
Attorney General for Oregon.

STATEMENT IN SUPPORT OF MOTION

The Special Master found himself hampered in deciding all the issues raised in the Bill of Complaint and the Amended Answer due to the absence of the riparian owners owning uplands adjoining the lake and abutting upon the Neal meander line and the effect of the local law of Oregon upon their rights. He made his report upon the then condition of the record with reference to the claim of the plaintiff to ownership of the beds of the lakes upon its theory that it was the owner of the entire area, including the bed prior to the date Oregon was admitted into the Union on February 14, 1859, and that the lakes involved were non-

navigable bodies of water, and that the title of the upland owner went to the center of the lakes at common law and that the common law of England was the common law of Oregon, findings herein challenged by the defendant; but inasmuch as none of the riparian owners were parties herein nor before the court, he felt compelled to recommend a decree which did not dispose of the issues involved herein.

Since the filing of the Special Master's Report on October 15th, 1934, the United States of America, has acquired by purchase a large number of holdings of riparian owners on Malheur Lake, the Sand Reef Division and Harney Lake, all of which are described in the Supplemental Answer tendered herewith. The defendant desires that these new facts occurring since the filing of the Special Master's Report be before the Court and which if they had been before the Special Master would have persuaded him to pass upon the important and material questions of title which he refused and failed to pass upon, all as set forth in the Exceptions filed by defendant herein. The Special Master held that Oregon's local law, whether declared by statute or judicial decision could not affect the rights of the United States, but with the acquisition of certain riparian owner's lands defendant submits that the United States has stepped into the shoes of such owners and subjected such lands so acquired to the rule of the local law which Oregon seeks to have applied herein. The issues presented by the Supplemental Answer will not require the introduction of evidence, as the facts of the newly acquired ownership of riparian lands by the plaintiff will undoubtedly be admitted herein.

ISAAC H. VAN WINKLE,
Attorney General for Oregon.

L. A. LILJEQVIST,
Assistant Attorney General.

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THE UNITED STATES OF AMERICA, *Plaintiff*,

vs.

THE STATE OF OREGON, *Defendant*.

SUPPLEMENTAL ANSWER

Comes now, the defendant, The State of Oregon, with leave of Court first had and obtained, and files this its Supplemental Answer to the Bill of Complaint of the plaintiff, setting forth new facts and additional to the defenses set forth in the Amended Answer filed herein, and which facts have occurred since the filing of the Report of the Special Master herein on October 15th, 1934, and defendant says:

That since the Report of the Special Master was filed with the clerk of this Court on October 15, 1934, the United States of America, plaintiff herein, has acquired by contract and deed of conveyance from the respective riparian owners, the legal title to the following described real property bordering on the J. H. Neal official 1895-1896 meander line referred to in the Bill of Complaint of the plaintiff and in the Amended Asnwer of the defendant filed herein, together with riparian rights appurtenant thereto and the name of the vendor in such contracts and conveyances is stated after the description, to-wit:

TOWNSHIP 26 SOUTH, RANGE 31 EAST OF THE WILLAMETTE MERIDIAN, NORTH OF MALHEUR LAKE.

Section 32. Lots 2, 3, 4. From Harney County, a body politic and corporate and one of the duly organized counties in the State of Oregon.
Section 28. Lots 4, 5, 6, 7. From said Harney County.
Section 26. Lots 3, 4. From George McGrath.
Section 23. Lot 1. From Leona Creason.
Section 24. Lots 1, 2. From Leona Creason.
Section 14. Lot 8. From Leona Creason.
Section 13. Lots 1, 2, 6. From Mary Griffin and others.

TOWNSHIP 26 SOUTH, RANGE 32 EAST OF THE WILLAMETE MERIDIAN, NORTH OF MALHEUR LAKE.

Section 18. Lots 6, 7. From Walla and Lucy Creasman.
Section 17. Lots 1, 2, 3, From Pacific Live Stock Co. a corp.
Section 8. Lots 4, 5. From Pacific Live Stock Co. a corp.
Section 9. Lots 1, 2, 3. From Pacific Live Stock Co. a corp.
Section 10. Lot 2. From Pacific Live Stock Co. a corp.
Section 2. Lot 5. From Elbert F. George and others.
Section 1. Lots 1, 2, 3. From Elbert F. George and others.

TOWNSHIP 25 SOUTH, RANGE 32 EAST OF THE WILLAMETTE MERIDIAN, NORTH OF MALHEUR LAKE.

Section 36. Lot 1. From Mary Ruh and others.

TOWNSHIP 25 SOUTH, RANGE 32½ EAST OF THE WILLAMETTE MERIDIAN, NORTH OF MALHEUR LAKE.

Section 31. Lot 3, and westerly part of lot 1. From Mary Ruh and others.
Section 30. Lots 6, 7. From John J. Heinz.
Section 29. Lot 2. From John J. Heinz.
Section 30. Lot 8. From Charles A. Spurlock.
Section 24. Southwest quarter of southwest quarter. From E. L. Smith.

Section 23. Lots 5, 7, 8. From H. Bechtel.
Section 26. Lots 1, 2. From H. Bechtel.

Township 25 South, Range 33 East of the Willamette Meridian.

Section 19. Undivided one-half interest in lots 6, 10. From James and Emma Thompson.
Lot 5. From Harney County.
Section 20. Lot 12. From Maggie C. Catterson.
Section 29. Lots 2, 3, 4, 5, 6. From Maggie C. Catterson.
Section 34. Lot 13. From Harney County.

Township 26 South, Range 33 East of the Willamette Meridian.

Section 3. Lots 11, 12, 13. From Carl Horstman.
Section 16. Lots 1, 3, 4. From Harney County.
Section 17. Lot 7. From Richard J. Haines.

Township 26 South, Range 32 East of the Willamette Meridian, South of Malheur Lake.

Section 33. Lots 9, 10, 11. From T. T. Dunn.
Section 32. Lots 3, 4. From T. T. Dunn.

Township 26 South, Range 31 East of the Willamette Meridian, South of Malheur Lake.

Section 36. Lots 10, 11, 12. From W. J. Clark and Dorotha Clark.
Section 30. Lots 13, 14. From Leona Creason.

Township 26 South, Range 30 East of the Willamette Meridian, South of Malheur Lake.

Section 25. Lots 9, 10. From Leona Creason.
Lots 5, 11. From Guy L. Hembree and others.
Section 34. Lot 4. From J. C. Syme and Anna E. Syme.

TOWNSHIP 27 SOUTH, RANGE 30 EAST OF THE WILLAMETTE MERIDIAN, SOUTH OF MALHEUR LAKE.

Section 8. Lots 1, 4, 5. From Harney County.

The plaintiff has also acquired by contract and conveyance from Wm. Hanley Co., a corporation the legal title to to Lot 5, Section 2, Township 27 South, Range 29 East of the Willamette Meridian.

That each of said individuals and corporations who as vendor conveyed to the plaintiff such respective lots and fractional subdivisions acquired title to such lands under settlements and entries validly initiated under the homestead laws of the United States, R. S. 2289, except that lot 13 of section 34, Township 25 South, Range 33 East of the Willamette Meridian was acquired under rights initiated under the Desert Land Act of March 3, 1877 and of March 3, 1891, lots 1, 3 and 4 of section 16, Township 26 South, Range 33 East of the Willamette Meridian were acquired by the State of Oregon as School Lands, lot 3 of section 32, Township 26 South, Range 32 East of the Willamette Meridian, South of Malheur Lake, was acquired under the Additional Homestead Act, R. S. 2306, 2307, and lot 4 of the same section was acquired by the State of Oregon as Indemnity School Lands, and lots 13 and 14 of section 30, Township 26 South, Range 31 East of the Willamette Meridian, South of Malheur Lake and lots 9 and 10 of section 25 of Township 26 South, Range 30 East of the Willamette Meridian, South of Malheur Lake were acquired by the State of Oregon as Indemnity School Lands, Act January 7, 1853, February 14 and 26, 1859, and all of said rights were initiated and became vested prior to the Executive Order of August 18, 1908, Bill of Complaint, Exhibit B, and pursuant thereto, the United States of America issued grants and patents to such lands hereinabove described according to the official plat of the survey of said land re-

turned to the General Land Office by the Surveyor General and were made and delivered to the respective grantees and patentees and accepted by them without any reservations or restrictions in terms in the grants or patents or otherwise or at all the dates and particulars of which are set forth in Appendix 9, pages 38-52, inclusive of the Report of the Special Master: Volume 2.

That each of the said vendors above named is the original grantee of the United States or was the owner by mesne conveyances from such original grantees, and the plaintiff is now claiming to own and hold such lands hereinabove described by virtue of said conveyances from the original grantees of the United States as aforesaid or their successors in interest by mesne conveyances in its proprietary capacity, and defendant alleges that such grants and patents were issued and delivered by the United States without any reservation of title to land or water within said meander lines of said lakes fronting such granted lands and thereby the plaintiff, the United States of America, abandoned all claim to the waters and beds of said lakes fronting such granted and riparian uplands, including the space between ordinary high and low water marks and assented that the said grants and patents of the United States of America should be construed and given effect and be determined by the laws of the State of Oregon and under which laws the defendant is the owner of the bed of the lakes fronting such granted and patented upland and of the waters over the same, and the plaintiff in acquiring title to said uplands hereinabove described acquired only the title which its grantors above named were vested with, which title stopped at the edge of said waters to-wit at the meander line, and the plaintiff, the United States of America, its various departments, officers and agents, should be and are estopped, by reason of the facts hereinabove alleged, from making any claim of right, title, interest or estate in or to the waters of said lakes fronting said granted uplands hereinabove described or to the beds under

the same or any portion thereof, and the title of the defendant in and to the said beds and to the waters over the same should be forever quieted in said defendant; and that defendant have and recover such other, further or additional relief in the premises, including the relief demanded in the Amended Answer and the benefit of the facts therein pleaded, as to this Court may seem meet and equitable.

ISAAC H. VAN WINKLE,
Attorney General for Oregon.

L. A. LILJEQVIST,
Assistant Attorney General.

In the Supreme Court of the United States

OCTOBER TERM, 1934

No. 13, Original

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF OREGON, DEFENDANT

MEMORANDUM OF THE UNITED STATES OPPOSING THE DEFENDANT'S MOTION FOR ORDER APPOINTING A RECEIVER AND MAKING RIPARIAN OWNERS AND CLAIMANTS PARTIES DEFENDANT, AND MOTION FOR LEAVE TO FILE SUPPLEMENTAL ANSWER

MOTION TO APPOINT RECEIVER AND TO MAKE ADDITIONAL PERSONS PARTIES DEFENDANT

The defendant in its main brief (p. 201, 202), contends that the upland proprietors and settlers within the Lake Malheur Reservation are necessary parties. In the main brief of the United States at page 102–105 we have pointed out why these proprietors and settlers are not necessary or proper parties to the instant suit, and we refer the Court to our brief on this point without repeating our argument.

This is an attempt on the part of the defendant to have settled in this suit, controversies and claims

which may exist between the patentees and the United States, and between the patentees and the State of Oregon, and also the claims which may be asserted by the settlers who occupy 29,406 acres in Malheur Lake enclosed by fences (S. M. R. p. 115). This is an effort to do in this suit what was attempted to be done in the Bill which was passed in 1930 by Congress and which, upon the recommendation of Attorney General Mitchell, was vetoed by President Hoover.

In recommending that the Bill be disapproved, the Attorney General said (Supplement to Report of Special Master, iv):

> There appears to be a controversy between the State of Oregon and the United States as to whether these lakes are navigable. If navigable the title to the beds was vested in the State upon its admission to the Union. If nonnavigable, the title to the beds of the lakes remained in the United States and is still the property of the United States unless it has passed to grantees of the United States. Lands adjacent to the lakes formerly constituting part of the public domain have been patented by the United States to various individuals. These patentees claim that the lakes are nonnavigable and that the title did not pass to the State upon its admission to the Union. They also contend that patents issued by the United States carry title to the beds of the lakes. There is a controversy between these patentees and the United States and between patentees and the

> State. The purpose of this bill seems to be to provide a tribunal by which all the parties to this three-cornered controversy may have their rights determined in one suit.

If these upland proprietors and settlers were made parties, they would in effect become plaintiffs against the United States, asserting claims against it. The United States has not given its consent that it may be sued by private persons or corporations in reference to the title to beds of non-navigable lakes, and we submit that there is no basis for the defendant's contention that these persons and corporations should be made parties defendant.

In connection with its motion to have the upland proprietors and settlers made parties defendant, the defendant makes a motion asking the Court to appoint a receiver of all the area in controversy. This area was set apart as a game reserve by President Roosevelt in 1908, and since that date has been administered as such by the United States through the Department of Agriculture.

The motion asks for the appointment of a receiver "so as to bring the *res* and all private persons claiming an interest therein within the complete jurisdiction of this Court." It is not suggested that a receiver is necessary in order to conserve the property or collect the rents and profits of the lands. This suit is brought to determine the conflicting claims of the United States and the State of Oregon to the title to the beds of

the lakes. We assume that the motion for the appointment of a receiver was made because this Court in *Oklahoma* v. *Texas,* 258 U. S. 574, said that when the court had charge of the *res* through a receiver it was proper for interested parties to intervene. In that case, on the motion of the United States, supported by the States of Oklahoma and Texas, this Court appointed a receiver because "there appeared to be urgent need for such action" to prevent great waste of the oil and gas in the area which were being extracted and appropriated by many persons, and because it was necessary to drill wells to prevent the oil and gas from being drawn off through wells in adjacent territory. That case is no authority for the appointment of a receiver in the instant case.

SUPPLEMENTAL ANSWER

In reference to the defendant's motion for leave to file a supplemental answer, it is true that the United States has entered into contracts to purchase the interests of certain upland proprietors adjacent to the ~~reservation~~ Neal Meander Line, but this has no bearing upon the issues in this case. The State of Oregon has no claim to the interests which these upland proprietors acquired from the United States, and the fact that the United States has contracted to purchase the interests which it formerly owned is not a matter which in any way affects the issues involved in the instant case.

CONCLUSION

It is respectfully submitted that the motions should be denied.

J. CRAWFORD BIGGS,
Solicitor General.

MARCH 1935

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